SCR.A/811/2005 1/6 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 811 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MR. CHIMANBHAI DEVJIBHAI PARMAR - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR MILIND R KULKARNI for Petitioner No(s).: 1.

PUBLIC PROSECUTOR for Respondent No(s).: 1.
NOTICE SERVED for Respondent No(s).: 2.

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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date : 02/08/2005

ORAL JUDGMENT

1.. The petitioner has preferred this petition challenging the order, dated 14.12.2004 passed by

the Family Court whereby the maintenance ordered is at the rate of Rs.800/-p.m to the wife and Rs.400/-p.m to the son, totaling to Rs.1,200/-p.m from 19.9.2000. The petitioner has also challenged the order passed by the Learned Judge of the Family Court of directing the petitioner to pay the arrears of maintenance of Rs.33,600/- with costs of Rs.250/- failing which imprisonment of each default of every month of 5 days totalling to 140 days is ordered.

2. Upon hearing Mr.Kulkarni for the petitioner and Mr.Gohil for the State, it appears that the learned judge after considering the evidence on record has found that there was ill treatment to the wife and the income assessed by the court of the petitioner is of Rs.3,000/-p.m and on that basis the amount of maintenance is ordered at the rate of Rs.800/-p.m to wife and Rs.400/-p.m to the son.

3. Considering the facts and circumstances and more parti cularly the reasons recorded by the Ld.judge of the Family Court in the judgment and order, dated 14.12.2004 it can not be said that any jurisdictional error is committed or the discretion exercised by the learned judge is so perverse which would call for interference by this court in exercise of its powers under Article 227 of the

Constitution of India.

4. As regards the challenge to the order passed by the learned judge dated 31.5.05 directing to pay the maintenance or imprisonment for the default in payment is concerned, it is admitted position that the petitioner has not paid any amount and therefore the imprisonment for 5 days for each default of every month can not be said to be unreasonable or arbitrary. Mr.Kulkarni, Ld.advocate for the petitioner submitted that the petitioner is having no means to pay and the petitioner is ready to stay with the wife. It was suggested by him that there was some chance of settlement and therefore with a view to explore the possibilities of settlement this court on 13.7.05 passed the following order:

1. Mr.Kulkarni, Ld.advocate for the petitioner states that the petitioner is ready to deposit Rs.5,000/-on or before 18.7.05 towards maintenance, and he further states that, as such, the matter is matrimonial matter pertaining to maintenance to wife from the husband and there are all chances of settlement.

2. In view of the above, notice returnable on 21.7.0-05.

3. The petitioner to deposit the amount with this court as declared and recorded herein above. The respondent No.1-State shall instruct the jail authorities for production of the petitioner before this court on 21.7.05 at 2.15 p.m so as to ascertain the chances of settlement between the husband and wife.

4. The respondent No.2 is also directed to remain

personally present before this court for settlement. Office to give copy of this order to Mr.Gohil, Ld.APP for compliance.

5. Thereafter, it has been reported by Mr.Kulkarni, Ld.Advocate for the petitioner as well as Mr.Gohil, Ld.APP that the wife was not ready to stay with the husband. Even otherwise also the default is there and the petitioner is in jail as per order dated 31.5.05. Even if the wife is ordered to stay with the husband, then also, as stated by the petitioner he has no capacity to maintain her and therefore I find that the order, dated 31.5.05 passed by the Ld.Judge of the Family Court should not be interfered with on this ground at this stage.

6. Mr.Kulkarni, Ld.Advocate for the petitioner submitted that the wife is having her own earning and source of income. No authenticated material is produced before the Ld.Judge of the Family Court. However, if any authenticated record is received by the petitioner, the petitioner may move the court as and when such question arises.

7. It may be recorded that in pursuance of the order, dated 31.7.05 the petitioner has deposited amount of Rs.5,000/- and the said amount, if considered and

appropriated towards the arrears of maintenance, the same would be for a period of about four months. Therefore, even if the order dated 31.5.05 is allowed to be maintained on the question of imposing 5 days imprisonment for each month default, the petitioner would be entitled to reduction of period of imprisonment for four months. As per the period ordered by the learned Judge of Family Court in the present case would be 20 days because the five days imprisonment is ordered for each default of respective month. Therefore, the respondent wife will be entitled to receive the amount of maintenance of Rs.5,000/- which is deposited by the petitioner with this court and consequently the imprisonment which is ordered of 140 days shall stand reduced to 120 days. Office to pay the amount of Rs.5,000/- deposited by the petitioner to the respondent-wife by account payee cheque.

8. Petition is partly allowed to the aforesaid extent. Rule is made partly absolute.

Office to send copy of this judgment to the concerned jail authority.

(JAYANT PATEL,J)

2.8.05/murty